

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 55 of 2005
In
SPECIAL CIVIL APPLICATION No. 7970 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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GHASURA MOHAMMED RAFIQ REHMATKHAN - Appellant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR DIPAK C RAVAL for Appellant(s) : 1,
MS PB SHETH, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 04/02/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Admit. Learned AGP Ms. Sheth waives service for the respondents.

2. Heard learned counsel Shri Raval for the appellant.

3. The appellant - Ghasura Mohammed Rafiq Rahmatkhan was appointed on the post of Armed Police Constable alongwith 35 other persons purely on temporary basis. It is clearly stated in the appointment order dated 6th January, 1990 (Annexure 'C') that appointment of those shall be deemed to be cancelled, who shall not resume their duties, within the time limit. Initially, he joined the service on 16th January, 1990 and within a short period of 9 days only, he submitted an application for leave for one day on 25th January, 1990 and thereafter, did not turn up and sent an application by post alongwith the medical certificate and applied for 20 days' leave. As per his own request, he was required to remain present on 14th February, 1990 but he could not resume on that day. Therefore, notice/order dated 22nd February, 1990 (Annexure 'D') was issued to him wherein it is stated that his services were purely temporary and no more required and, therefore, terminated after 7 days of the receipt of the same. However, on his application dated 1st March, 1990 (Annexure 'E'), the authority, by an order dated 9th March, 1990 (Annexure 'F'), permitted him

to continue to remain in service. Accordingly, he resumed the duty on 17th March, 1990 but once again within a period of one week i.e. on 25th March, 1990, without informing any higher officer or without getting his leave sanctioned, he left the job. Therefore, his services were once again terminated from the date of receipt of the order dated 6th April, 1990 (Annexure 'G'). Thereupon, he once again made an application dated 8th April, 1990 (Annexure 'H') to the authority to reconsider its decision but this time, the authority, by its order dated 10th May, 1990 (Annexure 'I'), informed that his applications dated 8th April, 1990, 19th April, 1990 and 1st May, 1990 for reinstatement in service have been filed as now nothing can be done. Thereafter, he approached the D.G.P. by his letter dated 16th July, 1990 (Annexure 'J') but he was informed by the D.S.P., Banaskantha at Palanpur that his application was rejected by the D.G.P. His another application dated 29th October, 1990 was also rejected in the same manner by the D.G.P. which was informed on 14th February, 1991 (Annexure 'L').

4. It seems that thereafter, he waited for a period of almost two years and then approached the Gujarat State Legal Aid Authority which has replied to him on 31st

December, 1992 that no remarks were received from the D.G.P., therefore, now he may initiate the proceedings against his termination. Thereafter, he has approached this court by way of writ petition in 1993. Thus, after a period of almost three years, he has challenged his impugned order of termination dated 6th April, 1990 before this court in 1993 by way of writ petition which was dismissed by the learned Single Judge mainly on the ground that the appointment of the petitioner was purely temporary and on *ad hoc* basis and he had worked only for a few days and though reinstated by the authority on his own once, he continued to remain absent even after reinstatement without his leave being sanctioned and the authorities were not satisfied with the genuineness of the medical certificate sent by him. Thus, this order dated 30th January, 2004 passed by the learned Single Judge dismissing the writ petition of the appellant - petitioner is challenged in this appeal.

5. Learned counsel Shri Raval for the appellant - petitioner, relying on the Supreme Court judgment in the case of **DIPTI PRAKASH BANERJEE vs. SATVENDRA NATH BOSE NATIONAL CENTRE FOR BASIC SCIENCES, CALCUTTA AND OTHERS** reported in **AIR 1999 Page 983** and another decision

reported in the same volume of the Hon'ble Supreme Court, submitted that by terminating the services of the petitioner once again by order dated 6th April, 1990, the respondent authority committed breach of principles of natural justice as without holding any regular inquiry and without issuing any show-cause notice for remaining absent, his services were terminated. Therefore, the impugned order of termination be quashed and set aside. None of these judgments will have any application on the facts of this case. Therefore, we have refrained ourselves from dealing with the same in detail.

6. It is no doubt true that before passing the impugned order at Annexure 'G', the petitioner was not heard but in his common appointment order alongwith others at Annexure 'C' dated 6th January, 1990, it was clearly stated that "appointment of those shall be deemed to be cancelled who shall not resume their duties within the time limit". Initially, the petitioner did join the services as per the said appointment order. But as stated earlier, within a period of less than 10 days after joining the service on 6th January, 1990, he applied for one day leave on 25th January, 1990 but thereafter did not turn up and then sent an application

alongwith medical certificate and applied for 20 days' leave. As per the said application, he was required to resume duty on 14th February, 1990 but did not resume the duty on that day nor submitted any joining report. Therefore, after few days i.e. on 22nd February, 1990 the authority terminated his services. However, considering his application dated 1st March, 1990 sympathetically, the authority allowed him to remain in service by its order dated 9th March, 1990 (Annexure 'F'). Unfortunately, the sympathy was misused and after resuming duty on 16th March, 1990 within 9 days i.e. on 25th March, 1990 once again he left the job without informing the higher authority or without getting the leave sanctioned. Under the circumstances, the authority had no option but to pass the order of termination and accordingly, fresh order dated 6th April, 1990 (Annexure 'G') was passed. Thus, it is clear that though the appointment of the appellant - petitioner was purely temporary, he was not sincere and was in the habit of running away from duty without informing the higher officer and without getting his leave sanctioned. He was appointed on a temporary basis on the post of Police Constable where the person is required to be more responsible towards his duty but in the beginning of his career, he had shown the tendency of

running away from service without his leave being sanctioned or without informing the higher authority. Once he was shown indulgence by the authority itself and permitted to resume his duty but he had not improved. In all, he had hardly worked for 14 days. After the fresh order of termination was passed on 6th April, 1990, he entered into correspondence with the authorities first with the disciplinary authority and then with the higher authority. When his application was turned down by the highest authority i.e. D.G.P. way back on 14th February, 1991, he did not do anything for a period of almost two years and in December, 1992, he approached the Legal Aid Committee. After the Legal Aid Committee advised him to approach this court by way of a writ petition in December, 1992, he waited for a considerable time upto April and then filed this petition. It is no doubt true that without considering the gross delay and laches in approaching this court, the learned Single Judge, on merits, dismissed the petition but we can certainly dismiss his appeal and writ petition also on the ground of gross delay and laches. As stated earlier, such an irresponsible person cannot be retained in service in such a disciplined force like Police Department and particularly, when his services were purely temporary and

the person who has hardly worked for a couple of days and remained absent from duty without informing the higher authorities can never be kept in service.

7. In view of the above discussion, this appeal fails and is hereby dismissed. However, there shall be no order as to costs.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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